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**IN THE
COURT OF APPEALS OF INDIANA**

TAIWAN MANUEL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0610-CR-883
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael Jensen, Judge
Cause No. 49G02-0501-FB-3615

August 8, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Taiwan Manuel (“Manuel”) appeals his conviction in Marion Superior Court of Class B felony possession of a firearm by a serious violent felon. He raises two issues, which we restate as:

- I. Whether the trial court abused its discretion by refusing to conduct bifurcated proceedings; and,
- II. Whether the trial court abused its discretion by admitting statements he made to officers in an unrecorded jailhouse interview.

We affirm.

Facts and Procedural History

On January 7, 2005, Indianapolis Police Officer David Kinsey stopped Manuel after observing him run a red light at the intersection of Raymond Street and Pleasant Run Parkway. Manuel did not have a drivers license, but produced a state identification card. As Officer Kinsey ran Manuel’s information, he observed Manuel lean down “like he was reaching underneath the seat.” Tr. p. 48. Officer Kinsey approached the vehicle to place Manuel under arrest and noticed the barrel of a gun underneath the driver’s seat. After arresting and handcuffing Manuel, Officer Kinsey and another officer discovered a loaded Beretta nine-millimeter handgun with an obliterated serial number.

On January 10, 2005, Manuel was interviewed in jail by an Indianapolis police officer and a federal ATF agent assigned to a special unit investigating firearms-related crime. Manuel was informed of his Miranda rights, signed a waiver, and indicated that he was willing to speak with the investigators. During the approximately thirty-minute interview, Manuel admitted that he bought the gun from an acquaintance who told him

“m]ake sure you don’t get caught with it[,] [i]t’s hot.” Tr. p. 164. The interview was not recorded.

The State charged Manuel with Class B felony unlawful possession of a firearm by a serious violent felon, Class C felony possession of a handgun with an obliterated serial number, Class C felony possession of cocaine and a firearm, Class D felony possession of cocaine, Class C felony carrying a handgun without a license, and Class A misdemeanor driving while suspended. The State later alleged Manuel to be a habitual offender. Manuel moved for a bifurcated jury trial and to suppress statements made to investigators while he was in custody. The trial court denied both motions.

On the day jury trial commenced, the trial court granted the State’s motion to dismiss all charges except for unlawful possession of a firearm by a serious violent felon and the habitual offender allegation. The jury found Manuel guilty of unlawful possession of a firearm by a serious violent felon and Manuel admitted to being a habitual offender. On September 11, 2006, the trial court sentenced Manuel to fifteen years with a thirty-year habitual offender enhancement, for an aggregate sentence of forty-five years. Manuel now appeals.

I. Bifurcation of Proceedings

First, Manuel argues that the trial court erred when it refused to conduct bifurcated proceedings. On the State’s motion, all charges but the unlawful possession of a firearm by a serious violent felon count against Manuel were dismissed the day of trial. A defendant tried solely for the offense of unlawful possession of a firearm by a serious violent felon is not entitled to have the proceedings bifurcated in such a way that the jury

will not hear of his prior felony conviction before it determines whether he was in possession of a firearm because the evidence of the prior conviction is an essential element of the crime. Dugan v. State, 860 N.E.2d 1288, 1292 (Ind. Ct. App. 2007), trans. denied; Spearman v. State, 744 N.E.2d 545, 547-48 (Ind. Ct. App. 2001), trans. denied.

Manuel acknowledges the Dugan and Spearman holdings, but “respectfully disagrees with this trial procedure due to the extreme prejudice of being labeled a ‘Serious Violent Felon.’” Br. of Appellant at 11. He directs us to Williams v. State, 834 N.E.2d 225 (Ind. Ct. App. 2005), wherein a panel of this court expressed its approval of the trial court’s decision to bifurcate the defendant’s trial so that the jury first considered whether he possessed a firearm, and in the second phase of the trial, determined if he was a serious violent offender. While urging trial courts to use the bifurcation procedure in such cases, Williams also notes that “it is not grounds for reversal to refer to a defendant as a ‘serious violent felon’ before his or her guilt or innocence is decided.” 834 N.E.2d at 228.

Here, Manuel agreed to stipulate to his status as a serious violent felon and the jury was advised of this stipulation by way of a preliminary instruction which stated: “The parties have agreed and stipulated that the defendant has a conviction listed in I[ndiana] C[ode] 35-47-4-5. No further proof will be introduced in this case. You are instructed that you are to consider such fact as true and proven beyond a reasonable doubt.” Appellant’s App. p. 96. Manuel also acknowledges that the trial court limited the State’s use of the term “serious violent felon” in order to offset the risk of unfair prejudice. Br. of Appellant at 11 (citing Tr. pp. 12, 18-19). In light of these facts and

circumstances, the trial court did not abuse its discretion when it declined to conduct bifurcated proceedings. See Dugan, 860 N.E.2d at 1293.

II. Admission of Evidence

Next, Manuel argues that the admission of evidence of his in-jail interview violates his due process rights because the interview was not electronically recorded. Although Manuel originally challenged the admission of the evidence through a motion to suppress, he appeals following a completed trial and challenges the admission of such evidence at trial. “Thus, the issue is ... appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial.” Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

Manuel asks that we revisit this court’s holdings in Stoker v. State, 692 N.E.2d 1386 (Ind. Ct. App. 1998), and Gasper v. State, 833 N.E.2d 1036 (Ind. Ct. App. 2005), trans. denied, that Article I, Section 12 of the Indiana Constitution does not require that custodial interrogations be recorded. While we decline to do so, we do echo the recommendation expressed in both these opinions that law enforcement officers record interviews as a matter of sound policy. Gasper, 833 N.E.2d at 1040; Stoker, 692 N.E.2d at 1390. That said, we cannot conclude that the trial court abused its discretion when it admitted evidence of Manuel’s unrecorded questioning.

Conclusion

The trial court did not abuse its discretion when it declined to bifurcate Manuel’s trial, or when it admitted evidence of his unrecorded custodial interview.

Affirmed.

KIRSCH, J., concurs.

DARDEN, J., dissents without opinion.